

Application Nos.4144 and 4950 of 2016

M.M. SUNDRESH,J.

Seeking to modify the order passed by this Court, after hearing the parties on 06-06-2016, Application No.4144 of 2016 has been filed on the sole ground that the respondents herein have not filed the counter affidavit in O.P.No.772 of 2012.

2. The order passed by this Court on 06-06-2016 speaks for itself. There are three factors which are not in dispute:

(i) The execution of the Will which has led to the present proceedings, including the issue pertaining to letters of administration or probate;

(ii) Note signed by the testator in Page No.23 of the typed set of papers dated 19-10-2006 ; Incidentally, the testator himself was a Lawyer;

(iii) It is also to be seen that a separate petition was filed earlier. Apart from the same, caveat was also filed. One more thing has happened, which is, a counter affidavit has been filed, though belatedly. Therefore, the contention sought to be raised are technical in nature.

3. This application is nothing but to review the order passed. After all, this Court is bound to satisfy the intention of the testator as recorded by the order passed earlier. Moreover, this Court has not disposed of the original petition which is still pending. On the contrary, this Court has merely directed the learned Master to look into the rival contentions of the parties concerned which is limited in nature. Therefore, looking from any angle, this Court is not inclined to grant any relief in this application(appln.No.4144 of 2016). The learned Master to conclude the evidence as ordered by this Court on 06-06-2016.

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4. Incidentally, the application filed to discharge the caveat filed by the third respondent (Appln.No.4950 of 2016) is also rejected. Admittedly, along with caveat, objections have been raised which is not in dispute that the respondents do have a caveatable interest.

5. This Court desist from converting this petition into Testamentary Original Suit(TOS) for the reasons stated earlier. In any case, this matter shall be considered after the evidence is recorded. Hence, Application No.4950 of 2016 stands dismissed.

6. The learned Master is directed to conclude the evidence as ordered by this Court in the earlier order dated 06-06-2016 within a period of four weeks from the date of receipt of a copy of this order. It is submitted that the evidence of the petitioner is already over. The matter shall be listed after recording evidence.

09-11-2016

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